

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS April 2, 2008

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

In re:

JANE JOYCE RICE,

Petitioner.

No. 08-8021

(D.C. No. 2:07-CV-00019-CAB)

(D. Wyo.)

ORDER

Before **KELLY**, **BRISCOE**, and **HOLMES**, Circuit Judges.

Jane Joyce Rice seeks a writ of prohibition requiring the district court to set aside an entry of default in a proceeding to foreclose on liens for non-payment of federal taxes. We note that, after Ms. Rice filed her petition, the district court (1) found that it retained jurisdiction because the instant petition, which it construed as a notice of appeal, was frivolous, and (2) entered a default judgment and order of foreclosure and judicial sale against her. *United States v. Rice*, No. 2:07-cv-19-CAB (D. Wyo. Mar. 27, 2008).

The standards for a writ of prohibition are essentially the same as for a writ of mandamus. *In re McCarthy*, 368 F.3d 1266, 1268 (10th Cir. 2004). Thus, Ms. Rice must show: (1) she has a “clear right to the relief sought”; (2) “the respondent has a plainly defined and peremptory duty” to perform the requested

action; and (3) there is “no other adequate remedy.” *Id.* (quotation and citations omitted).

Even if the district court erred in entering the default judgment, Ms. Rice has an adequate remedy – a direct appeal. A writ for extraordinary relief “is not a substitute for an appeal.” *Weston v. Mann (In re Weston)*, 18 F.3d 860, 864 (10th Cir. 1994). The district court notified Ms. Rice of her right to appeal and provided that its order of foreclosure would be stayed pending an appeal. Rather than seeking extraordinary relief, if she wishes to challenge the district court’s judgment, Ms. Rice should file a notice of appeal from that judgment.

The petition for a writ of prohibition is DENIED.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal line.

ELISABETH A. SHUMAKER, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

April 02, 2008

Douglas E. Cressler
Chief Deputy Clerk

Ms. Jane Joyce Rice
9 Pleasant Valley Lane
Sheridan, WY 82801

RE: 08-8021, In re: Rice
Dist/Ag docket: 2:07-CV-00019-CAB

Dear Ms. Rice:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

Elisabeth A. Shumaker
Clerk of the Court

cc: Michael G. Pitman
Nicholas Vassallo